

## Reemployment Rights

### INTRODUCTION:

The Veterans' Reemployment Rights Act (VRRRA) was first enacted in 1940 and most recently amended in 1991. It gives Reservists and National Guard members the right to time off from their civilian jobs to participate in military training. It protects them from discharge from their civilian jobs or from discrimination due to their military obligations. The VRRRA also applies to any person who gives up a civilian job to go on active duty (voluntarily or involuntarily) during peacetime or wartime. Such a person is entitled to return to his or her civilian job and to receive pay raises, promotions, pension credit, seniority and other benefits as if he had been continuously employed, provided certain eligibility criteria are met.

### QUESTIONS AND ANSWERS:

Q. How can I get back my old job after a period of military service?

A. In the event of a Reserve call-up, you generally must make application for return to your former job within 90 days of release from active duty. In the case of active-duty military personnel (not subject to a Reserve call-up), application must also be made for reemployment within 90 days of release from active duty. You don't actually have to return to work then but must do so within a "reasonable time."

Q. How do I apply?

A. You will need to inform some responsible person at your place of employment that you are a former employee and a returning veteran. The application need not be writing but the individual must request a job -- a simple inquiry regarding job opportunities may not be enough. Hospitalization upon release from active duty extends the application period for the duration of the hospitalization (up to one year). Acceptance of another job by the veteran does not waive his employment rights regarding the former job.

Q. Who is covered by the VRRRA?

A. You are covered if you enlisted or were appointed in the armed forces for a period of time normally expected to exceed six months. You are also covered if you are a member of the Reserve or National Guard called to active duty for training or inactive duty for training. The law applies to all branches of military service.

Q. Does the law apply if I volunteer for recall to active duty? What if I'm just assigned to a motor pool or armory across town, rather than in another state or overseas?

A. The VRRRA offers equal protection to volunteers and those who are called up involuntarily. It also applies equally to servicemembers stationed locally or far away from their place of employment.

Q. What jobs are covered?

A. To be protected by the VRRRA, an employee must leave the employment of another and the employment must be other than temporary. The following guidelines apply--

- a. The word "temporary" means that the job was mutually understood to be limited to a brief and non-recurring project or period of time. Probationary periods are generally covered by the VRRRA, since they are not the same as temporary positions.
- b. Part-time or seasonal employment is covered if it is permanent or at least reasonably expected to be recurrent from season-to-season on the basis of custom, practice or contract.

- c. Apprentice and trainee positions are covered. However, contract positions are covered only if the contract has not expired upon the return of the veteran or if the contract is customarily renewed upon expiration.
- d. Strike or layoff status does not defeat a veteran's rights if the strike is settled or layoff recall occurs.

Q. Do I have to get back my same job?

A. No--federal law only requires that you be offered a job with the same pay, rank and seniority as you could have expected if your employment hadn't been interrupted by military service.

Q. What employers are covered?

A. Federal, state, county and local governments are covered by the VRRRA. Private employers are also covered. The size of the business is irrelevant.

Q. How much advance notice do I have to give my employer?

A. None. For security reasons, you may have to leave for active duty without giving any notice to your employer.

Q. Does the departing veteran's intent regarding his old job matter?

A. The intent of the veteran at the time of his or her departure from employment is critical. If a veteran leaves employment with the intent to enter active duty, the fact that a delay in reporting occurs is irrelevant. On the other hand, if the veteran quits a job without such intent, subsequent active duty will not create a right of return to the veteran. It is not necessary that entering military service be the only or even primary factor in the veteran's decision to leave his job. Simple intent will give rise to the right which is liberally construed in the veteran's favor.

Q. Do I have to report back for work immediately upon release from active duty?

A. No--you may take up to 90 days of unpaid leave before returning to your job.

Q. Do the veteran's qualifications matter?

A. A veteran must meet the minimum qualifications for the job to which he or she is entitled. A veteran must be given a reasonable time to regain or acquire the qualifications, as appropriate to the job. The fact that a person is better qualified is irrelevant so long as the veteran meets the minimum qualifications.

Q. What about the employer's changed circumstances?

A. The employer's changed circumstances may prevent rehiring if such circumstances have so changed as to make it impossible or unreasonable to reemploy the veteran. The following guidelines apply--

- a. Changed circumstances mean that the business, nature and/or size of employer has so drastically changed that the veteran's job would have been lost even without military service.
- b. Elimination of the veteran's job, in and of itself, is not changed circumstances if the veteran would have been transferred to another job had he or she then been employed by that employer.
- c. The Act specifically applies to successors of the employer, meaning that sales, incorporations, reorganizations, transfers or mergers of employers will not defeat a veteran's right to reemployment if substantially the same or a similar business is carried on.
- d. The fact that another is hired to replace the veteran is irrelevant, even if it means laying off or firing the replacement worker.

Q. What if I get into trouble while on active duty--can my boss refuse to rehire me?

A. No--as long as you were discharged under honorable conditions, your job rights are protected.

Q. What if my old salary rate has increased?

A. In interpreting the VRRRA, the U.S. Supreme Court has said that the veteran "does not step back on the escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously...." This means that--

- a. The veteran is entitled to all pay raises, promotions, seniority, benefits and authority that the veteran can demonstrate "to a reasonable certainty" he or she would have had but for military service.
- b. The employer is not required to pay the veteran for the period of absence in the military service.
- c. Truly one-time bonuses are not considered to be part of seniority but rather compensation for services and are thus not covered by the Act.
- d. Raises based on individual skill, production or other merit, together with annual cost-of-living adjustments are covered if routinely given to employees on a periodic basis.
- e. The escalator principle applies to fringe benefits also. Vacation accrual and sick leave accrual rates, if changed in the veteran's absence, apply to protect the returning veteran. Reinstated veterans are entitled to medical and other insurance provided to other employees without waiting periods.
- f. Finally, it must be remembered that the escalator can move down as well as up.

Q. Can I be fired after return to my old job?

A. Employers cannot discharge a returned veteran without cause. For active-duty returnees, this protection lasts for one year. For most recalled Reservists and National Guard members, the protection lasts for one year if the recall was in excess of 180 days. Discrimination based on military service of any sort and at any time, whether directly against veterans or current members of the Reserves or National Guard, is prohibited even if occurring years after return to the job or entry into the Reserves or Guard.

Q. What if I am disabled upon return?

A. Returning disabled veterans are entitled to reemployment in the "nearest approximation" of their pre-service jobs as will provide them with like seniority, status, pay and benefits as if they had not left for military service. In addition, it should be noted that the position must be consistent with the veteran's disability but the law does not require a new position to be created. Disability need not be service-connected but must have either been sustained, aggravated or manifested while on active duty. Special disability provisions of the statute do not apply if the returning veteran is qualified to perform the duties of the position to which he or she would otherwise be entitled. Neither a medical discharge nor a medical retirement establishes disability under the VRRRA. This remains primarily a medical/factual determination on a case-by-case basis.

Q. If I take a liking to military service and decide to remain on active duty after being called up, does my boss still have to hold a job open for me?

A. Yes--the law requires your job to be held open for four years under ordinary circumstances.

Q. How is the Veterans' Reemployment Rights Act enforced?

A. The secretary of labor is charged with enforcing the provisions of the VRRRA. Any veteran denied reemployment should be referred to the Veterans' Employment and Training Service

(VETS), US Department of Labor. The national office telephone number is 202-523-8611. VETS satisfactorily settles 95% of all reemployment cases. The vast majority of employers are willing to comply when employed of their obligations. If the employer will not comply after attempts have been made through the department of labor, the US Attorney's office will file suit on behalf of the veteran and can ask the court for back pay, adjustments to job assignment, insurance, retirement, vacation and other fringe benefits.